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No. 30

In the Supreme Court of the United States

OCTOBER TERM, 1950

UNITED STATES OF AMERICA, APPELLANT

v.

UNITED STATES GYPSUM COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOTION BY THE UNITED STATES FOR AMENDMENT
OF COURT'S OPINION

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The United States moves that the Court amend the last paragraph on page 12 of the Court's slip opinion in the ~~above~~ case so as to clarify the holding of the Court with respect to Sections 1 and 2 of Article V of the judgment proposed by the Government. The paragraph in question reads as follows:

(d) The Government asks that the decree forbid standardization of trade practices through concerted agreement. Our former *Gypsum* opinion, pp. 382-83, gives a summary of the methods adopted. Another method of regulating sales was by

(1)

special provision for certain classes of customers, jobbers and manufacturing distributors. See 333 U. S. at 397 and 399, n. 18. We think this would justify the Government's requests. Article V, §§ 3, 4 and 6.

Article V of the Government's proposed judgment contained six numbered sections or subparagraphs. The Court (slip opinion, p. 14) approved a revised form of Section 5 of Article V. The Government interprets the paragraph of the Court's opinion quoted above as expressing approval of the substance of the prohibitions embodied in the remaining sections of Article V, namely, Sections 1, 2, 3, 4 and 6. But the fact that Sections 3, 4 and 6 were explicitly approved, while Sections 1 and 2 were not, may lead to time-consuming controversy in the district court as to whether the substance of the prohibitions of Sections 1 and 2 should be included in the judgment, and possible action by the district court contrary to the intent and meaning of this Court's opinion.

It seems clear that the first two sentences of the quoted paragraph refer to Sections 1 and 2 of our proposed Article V. The first sentence aptly describes the subject matter of these sections and the second sentence states that the Court's "former *Gypsum* opinion, pp. 382-83, gives a summary of the methods adopted." The pages of the *Gypsum* opinion to which the Court

referred were those which the Government had cited (Br. p. 40) as showing that the defendants had engaged in these practices. The third sentence of the quoted paragraph describes the practices dealt with in Sections 3 and 4 of our proposed Article V. After a reference to the pages of the former opinion where these practices were discussed, the paragraph concludes: "We think this would justify the Government's requests. Article V; §§ 3, 4 and 6."

If the Government is correct in inferring that the Court intended to give to Sections 1 and 2 the same measure of approval as it gave to Sections 3, 4 and 6, the Court's holding would be clarified by including the two former sections among the sections cited at the end of the paragraph. This would mean changing the final reference to Article V so that it would read: "Article V, §§ 1, 2, 3, 4 and 6."

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

December 1950.